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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 14 2000

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Grants for the Special Projects and Programs Authorized by this Agency's FY 2000 Appropriations Act

FROM: Michael B. Cook, Director *Michael B. Cook*
Office of Wastewater Management (4201) *for Mr. Cook*

TO: Water Management Division Directors
Regions I - X

PURPOSE

The purpose of this memorandum is to provide information and guidelines on how the Environmental Protection Agency (EPA) will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants account of the Agency's fiscal year (FY) 2000 Appropriations Act.

BACKGROUND

The Environmental Protection Agency section of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (P. L. 106-74) included \$331,650,000 in the State and Tribal Assistance Grants (STAG) account for funding 200 water, wastewater and groundwater infrastructure projects, \$50,000,000 for the United States-Mexico Border program (including two projects identified in the Conference Report), and \$30,000,000 for the Alaska Rural and Native Villages program.

Title III, Section 301, of the Consolidated Appropriations Act, 2000 (P. L. 106-113) included a government-wide rescission of a portion of the budget authority provided for each department, agency, instrumentality, or entity of the Federal government. Each agency, department, instrumentality or entity was authorized to allocate the amount of the rescission, in accordance with the provisions and restrictions contained in P. L. 106-113, among the various programs, projects, and activities that are to be funded from the enacted FY 2000 budget authority. The Agency's distribution of the rescission resulted in a total reduction of \$16,306,000 for 198 of the 200 water, wastewater and groundwater infrastructure projects identified in the STAG account. The Agency did not reduce funds for the two projects in the

STAG account (Bristol County, MA and New Orleans, LA) that were included in the President's budget request or for the United States-Mexico Border and the Alaska Rural and Native Villages programs. The amounts available for the special projects (which incorporates the effect of the rescission) are shown in Attachment 1.

The 204 special projects (including two to be funded by monies appropriated for the United-States Mexico Border program, and two that were transferred from other accounts) are identified in Attachment 1. The authority for awarding these grants and grants for the United States-Mexico Border program and the Alaska Rural and Native Villages program is the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (hereafter referred to as the FY 2000 Appropriations Act.)

The specific requirements governing the award of the special projects are contained in the following documents: the Appropriations Act, the Conference Report (H.R. Rep. No. 106-379), the House Report (H.R. Rep. No. 106-286), and the Senate Report (S. Rep. No. 106-161). The specific requirements contained in these documents have been incorporated into this guidance memorandum.

As with previous Appropriations Act projects, these grants (with the exception of the three National Decentralized Wastewater Demonstration projects noted at the end of Attachment 1) will be awarded and administered at the Regional Office level. The delegation of authority document that was signed by the Administrator on June 21, 1996 (see Attachment 2) transferred the authority for awarding Appropriations Act projects from the Administrator to the Regional Offices for FY 1996 and *subsequent years*. Accordingly, the Regions have the necessary guidance and authority, effective the date of this memorandum, to award grants for the special projects identified in Attachment 1.

COST SHARE REQUIREMENT

Public Law 106-74 incorporates by reference statements in the FY 2000 Conference Report which directs the Agency to apply cost sharing arrangements with grantees as they have in the past. Specifically, the Conference Report states that: "The conferees agree that the [funds] provided to communities or other entities for the construction of water and wastewater treatment facilities and for groundwater protection infrastructure shall be accompanied by a cost-share requirement whereby 45 percent of a project's cost is to be the responsibility of the community or entity consistent with long-standing guidelines of the Agency." (H.R. Rep. No. 106-379, at p. 141.) Accordingly, for projects authorized in the FY 2000 Appropriations Act, the Agency will apply the cost sharing requirements that were developed to implement the provisions of the FY 1995, FY 1997, FY 1998 and FY 1999 Appropriations Acts. The FY 1996 Appropriations Act did not specify any cost sharing requirements.

Our policy concerning the cost sharing arrangements for grants awarded for the United States-Mexico Border program and the Alaska Rural and Native Villages program is contained in the section of this memorandum entitled Program Specific Guidance.

Our policy for the projects identified in the FY 2000 Conference Report (including two to be funded by monies appropriated for the United States-Mexico Border program and two transferred from other accounts) is that grant applicants will be expected to pay for 45 percent of project costs with matching funds unless a different matching requirement is specified for a particular project or grant in the Appropriations Act or accompanying reports. However, the Conference Report also provided the Agency flexibility to recognize that special circumstances may exist and to consider an exception in cases where a unique or compelling rationale suggests lowering the match requirement.

One reason for granting an exception to the match requirement would be issues involving financial capability. In March 1997, EPA published "Combined Sewer Overflows -- Guidance for Financial Capability Assessment and Schedule Development." This financial guidance document includes a process for measuring the financial impact of current and proposed wastewater treatment facilities on the users of these facilities and establishes a procedure for assessing financial capability. The process for assessing financial capability contained in that document is based on EPA's extensive experience in the construction grants, State Revolving Fund (SRF), enforcement and water quality standards programs. Any request for an exception based on financial capability will be compared with the indicators contained in the referenced EPA financial guidance document.

Exceptions to the 45 percent match requirement must be approved by EPA Headquarters. All requests for an exception should be prepared by the EPA Regional Offices using information provided by the grant applicant. The requests, including sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201) USEPA, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

The Clean Water Act §603(h) and the implementing regulation at 40 CFR 35.3125(b)(1) preclude the use of loans from a Clean Water State Revolving Fund (CWSRF) as any part of the local share of an EPA grant funded treatment works project. However, CWSRF loans may be used to fund other related portions of the project. Additionally, in appropriate circumstances, an EPA grant and a CWSRF loan could be used to fund the same contract. For example, a \$15,000,000 contract could be funded by a \$5,500,000 EPA grant, \$4,500,000 in matching funds and a CWSRF loan of \$5,000,000. In any case, the grantee's record keeping system must have the necessary degree of sophistication so that grant records (especially those related to financial management, procurement and payments) can be distinguished from non-grant related records.

Some of the special Appropriations Act projects involve drinking water projects which may be eligible for assistance under a Drinking Water State Revolving Fund (DWSRF) authorized in section 1452 of the Safe Drinking Water Act of 1996 (P. L. 104-182). As a general rule, funds received under one Federal grant may not be used for the matching share required by another Federal grant, unless the statute specifically authorizes it. (See Office of Management and Budget Circular A-102, "Uniform Requirements for Assistance to State and Local Governments," Attachment F, Section 2.c.) Accordingly, loans from a DWSRF cannot be used to satisfy the cost

sharing requirements for the special projects. However, as in the case with CWSRF loans, a DWSRF loan can be used to fund other related portions of the project.

Federal funds from other programs may be used as all or part of the match for the special projects only if the statute authorizing those programs specifically allows the funds to be used as a match for other Federal grants. Additionally, the other Federal programs must allow their appropriated funds to be used for the planning, design and/or construction of water, wastewater or groundwater infrastructure projects.

OPERATING GUIDANCE

Funds appropriated under the STAG account can, if the situation warrants, be used for grants and cooperative agreements to nonprofit organizations. However, grants cannot be awarded to those nonprofit organizations classified by the Internal Revenue Service as §501(c)(4) organizations that engage in lobbying activities (see P. L. 104-65 -- Lobbying Disclosure Act of 1995). The rationale for any award to a nonprofit organization should be clearly explained, suitably documented, and included in the project file.

The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants and cooperative agreements with nonprofit organizations. In appropriate circumstances, such as grants for demonstration projects, the research and demonstration grant regulations at 40 CFR Part 40 can be used to supplement either 40 CFR Part 30 or Part 31.

A listing of the Federal Laws and Executive Orders that are applicable to all EPA grants, including the projects authorized by the FY 2000 Appropriations Act, is contained in Attachment 3. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is contained in Module No. 2 of the EPA Assistance Project Officers Training Course that is available through the Regional Grants Management Offices.

The Catalog of Federal Domestic Assistance (CFDA) number for the special Appropriations Act projects is 66.606 "Special Purpose" and the Grants Information and Control System (GICS) code for the special projects is XP. The Object Class Code (budget and accounting information) for the special projects is 41.83. Applicants should use Standard Form 424 to apply for the grants.

The Davis-Bacon Act does not apply to grants awarded under the authority of the FY 2000 Appropriations Act because the Act contained no language making it apply.¹ However, if

¹The Building and Construction Trades Department, AFL-CIO requested a ruling from the Department of Labor concerning EPA's policy on the applicability of Davis-Bacon Act provisions to the special Appropriations Act projects. The Acting Administrator, Employment Standards Administration, Wage and Hour Division, US Department of Labor, issued a final decision on November 20, 1998, upholding EPA's determination that the

FY 2000 funds are used to supplement funding of a construction contract that included Title II requirements (e.g., contracts awarded under the construction grants or coastal cities programs) the entire contract is subject to Davis-Bacon Act requirements, including the portion funded with FY 2000 funds.

The National Environmental Policy Act (NEPA) applies to the projects authorized by the FY 2000 Appropriations Act. The Agency issued two memorandums in January 1995, concerning NEPA compliance and the applicability of 40 CFR Part 29 (Intergovernmental Review) to the special projects authorized by this Agency's FY 1995 Appropriations Act. The requirements set forth in those memorandums are also applicable to the special projects authorized by the FY 2000 Appropriations Act. (Attachments 4 and 5 are copies of those memoranda.)

Generally, funds appropriated for the special projects identified in the Conference Report should not be used to pay down loans received from a State Revolving Fund or other indebtedness unless the legislative history for a particular project shows that it was the intent of Congress to use the funds for that purpose. Additionally, as discussed further in the following section, a deviation from 40 CFR 31.23(a) "pre-award costs" would be required. Any request to use special Appropriations Act grant funds to pay down a loan must be approved, in writing, by EPA Headquarters. The request, with sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201) USEPA, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

The project scope of work may, but need not, include planning and design activities and/or the cost of land. Land need not be an "integral part of the treatment process" as in construction grant projects. However, all elements included within the scope of work must conform to the requirements of 40 CFR Parts 30 or 31. This means: if planning and design is included, procurement of those services and the contracts must comply with the applicable sections of Parts 30 or 31; if land is included, there will be a Federal interest in the land regardless of when it was purchased and the purchase must be (must have been) in accordance with the applicable sections of Parts 30 or 31 and other applicable regulations.

On April 5, 1999, EPA established a formal policy concerning the post-award management and monitoring of grants and cooperative agreements by Headquarters and the Regional Offices. This policy (Attachment 6) applies to all assistance agreements awarded after June 1, 1999, including special Appropriations Act projects.

Davis-Bacon Act does not apply to the special projects. Shortly after that decision was rendered, the Building and Trades Department, AFL-CIO submitted a Petition for Review of the Acting Administrator's decision. That petition is currently under consideration at the Administrative Review Board, US Department of Labor.

On June 10, 1997, the Agency issued a strategy for administratively completing and closing out the remaining construction grant projects². Administrative completion takes place when a final audit is requested, or, if a final audit is not required, when the following has been achieved: all the grant conditions have been satisfied, a final inspection has been performed, the final payment has been reviewed and processed, and project performance standards have been achieved. Closeout takes place when a closeout letter is sent to the grant recipient. The June 10, 1997, strategy document established the goal of administratively completing post FY 1991 construction grant *and special Appropriations Act* projects within five years of grant award, and closing out construction grant *and special Appropriations Act* projects within seven years of grant award. Accordingly, all future grant awards, except in those circumstances where the complexities or size of the project dictates otherwise, should include schedules that are in conformance with the National goals.

You have a fiduciary responsibility to review the grant application to determine that:

- the scope of work of the grant is clearly defined,
- the scope of work is in conformance with the project description contained in Attachment 1,
- there is a clearly stated environmental or public health objective,
- there is a reasonable chance that the project will achieve its objective(s) and
- the costs are reasonable, necessary and allocable to the project.

You may impose reasonable requirements through grant conditions if you feel it necessary. Grant awards should be made expeditiously, but I expect you to review the applications carefully and award the grant only after you are satisfied that it is prudent to do so.

PRE-AWARD COSTS

The general grant regulation at 40 CFR 31.23(a) provides that "where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted." This regulatory provision prevents the inclusion of costs incurred prior to the award of the grant. Accordingly, for those grants governed by the provisions of 40 CFR Part 31, no pre-award costs can be included in the grant unless a deviation from regulations has been approved by the Grants Administration Division in accordance with 40 CFR 31.6(c). The regulation at 40 CFR 30.25(f) describes the requirements concerning pre-award costs for grants and cooperative agreements to nonprofit organizations.³

²In a memorandum dated May 6, 1999, the Agency issued supplemental guidance providing clarification to the Post-1997 Construction Grants Closeout strategy.

³The Agency is developing a class deviation to allow the Regional Offices to approve pre-award costs consistent with past deviations that approved specific categories of pre-award costs for the special projects.

In the past, the Agency has approved deviations from 40 CFR 31.23(a) for pre-award costs for a number of special Appropriations Act projects. Consistent with the intent of the requirements for pre-award costs set forth in OMB Circular A-87, the Agency has generally approved such costs only when they meet one or more of the following criteria:

1. The pre-award costs were incurred after the start of the fiscal year for which the funds were appropriated but before grant award; and/or,
2. The pre-award costs are for facilities planning or design work associated with the construction portion of the project for which the grant was awarded; and/or,
3. The project description contained in the Conference Report necessitates a scope of work that includes pre-award costs.

The determining factor in the applicability of the third criterion is the relationship of the specificity of the project description contained in the Conference Report to the amount of future work (i.e., work performed after grant award) that could be included in the scope of work of a grant. If there is sufficient future work to develop a scope of work for a grant that is in conformance with the project description contained in the Conference Report, a deviation within the context of the third criterion would not be warranted. However, if there is not sufficient future work, a deviation from 40 CFR 31.23(a) would, in most cases, be appropriate.

An example of a deviation that meets the third criterion is one approved for the City and County of San Francisco, California. The Agency's FY 1995 Appropriations Act provided \$40,000,000 to San Francisco for "the Richmond transport control wastewater facility." The total cost of the "Richmond transport control wastewater facility" was \$86,849,286. About 65 percent of the cost for constructing the facility was incurred prior to grant award. Accordingly, in order to award the grant under the terms and conditions of the Appropriations Act, which required at least a 45 percent local match and *explicitly identified* the scope of the project as "the Richmond transport control wastewater facility," and since the construction cost for this facility was established at \$86,849,286, a deviation from 40 CFR 31.23(a) was approved that allowed the inclusion of construction costs incurred since September 1, 1993, which was the date of initiation of construction for the facility. For administrative convenience purposes, the grantee requested that the grant be awarded with a 53.94 percent local match. This allowed EPA and the grantee to share the costs for the entire facility which greatly simplified the payment review process.

Any request for a deviation from 40 CFR 31.23(a) should include an analysis/discussion that directly addresses the criteria listed above.

PROGRAM SPECIFIC GUIDANCE

The FY 2000 Appropriations Act and Conference Report contains a number of requirements for the United States-Mexico Border program and the Alaska Rural and Native

Villages program. The following discussion describes the Agency's interpretation and planned implementation of those requirements.

United States-Mexico Border Program:

The FY 2000 Appropriations Act provides \$50,000,000 for:

architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission.

The scope of work for grants awarded for the United States-Mexico Border program must conform with the language contained in the Appropriations Act and the grant file should include documentation that describes the results of the discussions and consultations with the appropriate border commissions.

Additionally, Section 423 of the Special Provisions to the FY 2000 Appropriations Act states that:

Notwithstanding any other law, funds made available by this or any other Act or previous Acts for the United States/Mexico Foundation for Science may be used for the endowment of such Foundation: Provided, That funds from the United States Government shall be matched in equal amounts from Mexico: Provided further, That the accounts of such Foundation shall be subject to United States Government administrative and audit requirements concerning grants and requirements concerning cost principles for nonprofit organizations: Provided further, That the United States/Mexico Foundation for Science is renamed the George E. Brown United States/Mexico Foundation for Science.

This language is self-explanatory and does not require any further interpretation. However, the Conference Report that accompanied the FY 2000 Appropriations Act does not direct the Agency to set-aside funds for the United States/Mexico Foundation for Science, as was the case in FY 1999.

EPA cost participation on projects funded from the United States-Mexico Border appropriation item (with the exception of the two projects identified in Attachment 1 which will be awarded through the Regional Office) will be decided on a project-by-project basis. The EPA cost share will depend on a number of factors such as, the relative benefits to the binational community served by the project; other funding participants and their capabilities; and the levels of planning and design to be accomplished.

On May 12, 1997, the Agency issued a memorandum (Attachment 7) concerning "Program Requirements for Mexican Border Area Projects Funded under the Authority of this Agency's FY 1995, 1996 and 1997 Appropriations Acts." The requirements set forth in the May 12, 1997,

memorandum are also applicable to the United States-Mexico Border Area projects funded under the authority of the FY 2000 Appropriations Act.

Alaska Rural and Native Villages Program:

The FY 2000 Appropriations Act provides \$30,000,000 "for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages." This includes the activities specified in the Safe Drinking Water Act of 1996, (P. L. 104-182, Section 303), specifically: "training, technical assistance, and educational programs relating to the operation and management of sanitation services in rural and Native villages."

In accordance with instructions contained in the Conference Report (H.R. Rep. No. 106-379, at p. 141) "The State of Alaska must also provide a 25 percent match for all expenditures through this program." This means that the State of Alaska must provide \$10,000,000 in matching funds. Additionally, at least \$2,666,667 (\$2,000,000-EPA share, \$666,667-State share) of the \$40,000,000 total project costs must be used "for training and technical assistance."

PROJECT SPECIFIC GUIDANCE

The FY 2000 Appropriations Act and Conference Report contains a number of provisions related to individual projects. The following discussion describes the Agency's interpretation and planned implementation of those provisions.

National Community Decentralized Wastewater Demonstration Projects:

The Conference Report identified three additional National Community Decentralized Wastewater Demonstrations Projects. The FY 2000 Conference Report states that: "The Committee expects to continue the cost share requirements for these three projects as was provided the first three project communities." Language in the FY 1999 Conference Report stated that "previous expenditures [are] to be counted toward a local cost share of these projects of only 25 percent." Accordingly, the Agency will apply these same requirements to the three new projects.

Project Search:

The Emergency Supplemental Appropriations Act for Fiscal Year 1999 included language concerning the funding of Project Search. Specifically the Act stated that:

Of the amount appropriated under the heading "ENVIRONMENTAL PROGRAMS AND MANAGEMENT" in title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Act, 1999 (Public Law 105-276), \$1,300,000 shall be transferred to the State and tribal assistance grant account for a grant for water and wastewater infrastructure projects in the State of Idaho.

This means that the requirements contained in this memorandum, including the 45 percent matching requirement, apply to the transferred funds. Since these are FY 1999 funds, it was not impacted by the rescission.

Grand Isle, Louisiana Project:

The Emergency Supplemental Appropriations Act for Fiscal Year 1999 also included language concerning the Grand Isle, Louisiana project. Specifically the Act stated that:

The \$3,045,000 appropriated in Public Law 105-276 for wastewater infrastructure needs for Grand Isle, Louisiana, in accordance with House Report 105-769, may also be used for drinking water supply needs for Grand Isle, Louisiana.

This language is self-explanatory and does not require any further interpretation. Since these are FY 1999 funds, it was not impacted by the rescission.

Lake Ponchartrain Basin Foundation Project:

The FY 2000 Appropriations Act transferred funds contained in the FY 1999 Appropriations Act, Science and Technology Account, to the STAG Account, for the Lake Ponchartrain Basin Foundation project. Specifically, the FY 2000 Appropriations Act states that:

Provided further, That the unexpended funds remaining from the \$2,200,000 appropriated under this heading in Public Law 105-276 for a grant to the Lake Ponchartrain Basin Foundation circuit rider initiative in Louisiana shall be transferred to the "State and tribal assistance grants" appropriation to remain available until expended for making grants for the construction of wastewater and water treatment facilities and groundwater protection infrastructure in accordance with the terms and conditions specified for such grants in the report accompanying that Act.

This means that the requirements contained in this memorandum, including the 45 percent matching requirement, apply to the transferred funds. Since these are FY 1999 funds, it was not impacted by the rescission.

Upper Savannah, South Carolina Project:

The Conference Report that accompanied the FY 2000 Appropriations Act included the following provision concerning the Upper Savannah project that was included in the FY 1999 Appropriations Act: "It is the intent of the conferees that EPA is to award the remaining \$2,675,000 not yet awarded from the \$8,000,000 appropriated in Public Law 105-65 for the Upper Savannah Council of Governments for wastewater facility improvements, with a local match less than that normally prescribed by EPA for such grants."

The Agency has not yet determined what match requirement will apply. Since we do not

want to delay the issuance of this guidance document pending the determination, we will inform the appropriate parties in a separate issuance. Since these are FY 1999 funds, it was not impacted by the rescission.

Safford, Arizona Project:

The Conference Report that accompanied the FY 2000 Appropriations Act included \$3,000,000 “for a grant to the Arizona Water Infrastructure Financing Authority for making a loan to the city of Safford, Arizona to address the city’s wastewater needs, which will be repaid by the city to the Arizona Clean Water Revolving fund established under title VI of the Federal Water Pollution Control Act, as amended.”

The Agency has not yet determined how this provision will be implemented. Since we do not want to delay the issuance of this guidance document pending the determination, we will inform the appropriate parties in a separate issuance.

MERTS, Oregon Project:

The Conference Report that accompanied the FY 2000 Appropriations Act included the following language that affects a grant that could be awarded to Clatsop Community College with funds contained in the FY 1999 Appropriations Act: “In addition, for this year and prior fiscal years, any grants to nonprofit organizations (or educational institutions) for a project to demonstrate the use of an onsite ecologically based wastewater treatment process that are funded from monies included in EPA’s State and Tribal Assistance Grant account should not require more than a five percent match requirement.”

This language would allow a grant with a five percent matching requirement to be awarded to Clatsop Community College for the construction of a “living machine” wastewater treatment demonstration project at the Marine and Environmental Research Training Station (MERTS), South Tongue Point, Oregon.

The Conference Report language could affect other projects. The Regions should obtain guidance from Headquarters on the applicability of this language to other possible projects. Since these are FY 1999 funds, it was not impacted by the rescission.

Clarification of Projects Contained in the FY 1999 Appropriations Act:

The FY 2000 Appropriations Act included the following clarification of projects that were contained in the FY 1999 Appropriations Act:

- The grant to the Charleston, Utah Water Conservancy District shall be awarded to Wasatch County, Utah for water and sewer needs.

- The grant for the City of Fairbanks, Alaska, water system improvements shall instead be for the Matanuska-Susitna Borough, Alaska, water and sewer improvements.

This language is self-explanatory and does not require any further interpretation.

PROJECT MANAGEMENT RESOURCES

You should invite State agencies to participate as much as possible in the pre-application, application review, and grant administration process.

Legislative language in the FY 1997 Appropriations Act authorized the use of Title II deobligations for State administration of special Appropriations Act *wastewater* projects, coastal/neediest cities projects and construction grant projects. The guidance document on the implementation of this provision was issued by the Director, Municipal Support Division, on December 3, 1996 (see Attachment 8.)

States may also use funds awarded under §106 of the Clean Water Act for activities associated with these special projects provided §106 program officials agree.

ACTIONS

If you have not already done so, you and your staff should initiate discussions with the appropriate grant applicants to develop a detailed scope of work and to explain the grant application and review process. Additionally, the grant applicant should be provided with a copy of this guidance memorandum prior to grant award to ensure that the applicant is on notice of the applicable requirements before the grant is awarded.

If you have any questions concerning the contents of this memorandum, you can contact me or have your staff contact Larry McGee, Municipal Assistance Branch, Municipal Support Division, at (202) 260-5825.

Attachments

cc: Municipal Construction Program Managers
Region I-X

**SPECIAL WATER AND WASTEWATER INFRASTRUCTURE PROJECTS (STAG ACCOUNT)
INCLUDED IN EPA'S FY 2000 APPROPRIATIONS ACT**

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
New Britain and Southington, CT	1,425,400	wastewater infrastructure improvements
Connecticut and Massachusetts	1,354,100	wastewater infrastructure and combined sewer overflow improvements on the Connecticut River
Middlesex and Essex Counties, MA	677,050	combined sewer overflow infrastructure support
Essex County, MA	677,050	continued wastewater infrastructure improvements
Bristol County, MA	2,000,000	continued wastewater needs
Boston, MA	1,805,500	combined sewer overflow infrastructure improvements
Vinalhaven, ME	950,200	municipal sewer system
Epping, NH	1,900,500	wastewater infrastructure improvements
Berlin, NH	1,900,500	water infrastructure improvements
Nashua, NH	950,200	combined sewer overflow infrastructure improvements
Pownall, VT	2,565,700	wastewater treatment project
Cabot, VT	1,235,300	wastewater treatment project
Passaic Valley Sewerage Commission, NJ	4,751,200	combined sewer overflow requirements
North Hudson Sewerage Authority, NJ	1,425,400	combined sewer overflow infrastructure improvements
Newark, NJ	451,400	wastewater infrastructure improvements for the South Side Interceptor/Queens Ditch
New York City watershed	9,502,500	drinking water infrastructure needs in the New York City watershed
Rockland County, NY	4,751,200	wastewater infrastructure improvements within the Western Ramapo Sewer District
New York and Pennsylvania	902,700	wastewater infrastructure improvements at treatment facilities which discharge into the Susquehanna River
White Plains, NY	902,700	infrastructure improvements at the White Plains water filtration facility
Genesee County, NY	1,425,400	phase one of the Genesee County public water supply project
Verona, Hamlet of, NY	1,425,400	water and wastewater infrastructure improvements
Monroe County, NY	1,425,400	the Lake Water Supply project

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Syracuse, NY	950,200	water infrastructure improvements
Onandaga Lake, NY	17,579,600	continued clean water improvements
Cambridge and Salisbury, MD	4,751,200	the upgrade of sewage treatment facilities
Allegheny County, PA	2,755,700	continued development of the Three Rivers Wet Weather Demonstration program
Hampden Township, PA	950,200	wastewater infrastructure improvements
Springettsbury Township and City of York, PA	950,200	continued wastewater infrastructure improvements
Carrolltown Borough, PA	1,489,496	groundwater, drinking water and watershed infrastructure restoration and improvements
Sipesville, PA	2,013,077	groundwater, drinking water and watershed infrastructure restoration and improvements
Saint Vincent watershed, PA	108,327	groundwater, drinking water and watershed infrastructure restoration and improvements
Roaring Brook Township Sewer Authority, PA	285,060	wastewater infrastructure improvements
Olyphant, Borough of, PA	285,060	wastewater infrastructure improvements
Honesdale, Borough of, PA	380,080	wastewater infrastructure improvements
New Kensington, PA	950,200	wastewater and sewer infrastructure improvements
Lewistown Municipal Water Authority, PA	475,100	water and wastewater infrastructure improvements
Chambersburg Borough, PA	1,187,800	water and wastewater infrastructure improvements
Hollidaysburg Borough, PA	1,425,400	water and wastewater infrastructure improvements
Houtzdale Borough Municipal Authority, PA	190,000	water and wastewater infrastructure improvements
Tyrone Borough, PA	760,200	water and wastewater infrastructure improvements
Metal Township Sewer Authority, PA	475,100	water and wastewater infrastructure improvements
Decatur Township, PA	237,600	water and wastewater infrastructure improvements
Jefferson Township, Greene County, PA	475,100	water infrastructure needs in the Khedive area
Richmond, VA	3,801,000	continued development of combined sewer overflow improvements
Lynchburg, VA	3,801,000	continued development of combined sewer overflow improvements
western Lee County, VA	1,187,812	water and wastewater infrastructure improvements
Amonate, Tazewell County, VA	712,688	water and wastewater infrastructure improvements

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Huntington, WV	902,700	water and wastewater infrastructure improvements
Davis, WV	1,757,949	water, wastewater and sewer infrastructure improvements
Newberg, WV	1,805,461	water, wastewater and sewer infrastructure improvements
Chestnut Ridge Public Service District, Barbour County, WV	1,852,974	water, wastewater and sewer infrastructure improvements
Worthington, WV	1,235,316	water, wastewater and sewer infrastructure improvements
Welch, City of, WV	4,751,200	water and sewer improvements
Cherokee County, AL	712,688	wastewater infrastructure improvements
South Vinemont, AL	712,688	wastewater infrastructure improvements
Dodge City, AL	475,124	wastewater infrastructure improvements
Jefferson County, AL	950,200	water infrastructure needs
Mobile, AL	475,100	the Dog River watershed project
Stevenson, AL	902,750	wastewater infrastructure improvements
Athens, AL	902,750	wastewater infrastructure improvements
Franklin County, AL	2,850,700	a surface water treatment plant
Lafayette, AL	475,100	water system project
Florida's five water management district[s]	2,850,700	water, wastewater and water reuse infrastructure improvements through Florida's five water management district Alternative Water Sources Development program
West Palm Beach, FL	1,900,500	continuation of the water reuse infrastructure project
Tampa Bay, FL	4,751,200	the Tampa Bay regional reservoir infrastructure project
Opa-locka, FL	902,750	wastewater infrastructure improvements
North Miami Beach, FL	902,750	wastewater infrastructure improvements for the Highland neighborhood
Sarasota Bay, FL	1,425,400	wastewater infrastructure improvements necessary to reduce effluent discharge into Sarasota Bay
Bay County, FL	475,100	development of the Deer Point Watershed Protection Zone
Atlanta, GA	950,200	analysis and development of necessary combined system overflow facilities
Roswell, Mountain Park, Brookfield, cities of, and Fulton Co.	950,200	infrastructure development and improvements of the Big Creek watershed programs
Big Haynes Creek, GA	950,200	continued work on the basin stormwater retention and reuse project

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Warm Springs, City of, GA	475,100	wastewater infrastructure improvements
Jessamine County, KY	1,425,400	wastewater infrastructure development and improvements
Bonnieville, KY	570,100	wastewater and drinking water infrastructure improvements
Kentucky Turnpike Water District Division 2	380,100	wastewater and drinking water infrastructure improvements
Louisville, KY	1,425,400	wastewater infrastructure improvements at the West County Wastewater Treatment Plant within the Metropolitan Sewer District
Knott County, KY	1,900,500	water and wastewater infrastructure needs
Somerset, KY	1,330,350	water and wastewater infrastructure needs
Knox County, KY	950,250	water and wastewater infrastructure needs
Harlan, KY	950,250	water and wastewater infrastructure needs
McCreary County, KY	950,250	water and wastewater infrastructure needs
Henderson County Water District, KY	332,603	water, sewer, and wastewater infrastructure improvements within the Henderson County Water District
Logan/Todd Regional Water System, KY	285,088	water, sewer, and wastewater infrastructure improvements the Logan/Todd Water System
McLean County, KY	114,000	water, sewer, and wastewater infrastructure improvements the McLean County sewer system
Fancy Farm, KY	28,509	water, sewer, and wastewater infrastructure improvements the Fancy Farm water system
North Jessamine County, KY	2,850,700	wastewater system improvements
Flowood, City of, MS	2,660,700	the Hogg Creek Interceptor wastewater infrastructure improvements within the West Rankin Regional Sewage System
Picayune, MS	902,700	sewer and wastewater infrastructure needs
DeSoto County, MS	2,803,259	wastewater infrastructure improvements at the DeSoto County Wastewater Treatment Facility
Farmington, City of, MS	522,641	wastewater collection and treatment facility
Lamont, MS	451,400	wastewater infrastructure improvements
Jackson, MS	4,941,300	wastewater infrastructure evaluation and improvements
Buncombe County Metropolitan Sewerage District, NC	1,900,480	drinking water and wastewater infrastructure improvements
Waynesville, town of, NC	475,120	drinking water and wastewater infrastructure improvements

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Lake Marion Regional Water Agency, SC	3,801,000	continued development of water supply needs
Shullerville-Honey Hill, SC	2,185,600	water extension project
Greenville County, SC----see NOTE 1.	950,200	wastewater infrastructure development and improvements at the George's Creek Wastewater Treatment Plant
Sunbright Utility District, Morgan County, TN	1,900,500	drinking water infrastructure improvements
DeKalb, City of, IL	2,375,616	drinking water infrastructure improvements
Yorkville, City of, IL	950,246	drinking water infrastructure improvements
Elburn, City of, IL	475,123	drinking water infrastructure improvements
Batavia, City of, IL	1,425,369	drinking water infrastructure improvements
Oswego, City of, IL	950,246	drinking water infrastructure improvements
Geneva, City of, IL	950,200	drinking water infrastructure improvements
Chicago, IL	4,513,700	continued development of the tunnel and reservoir project (TARP) of the Metropolitan Water Reclamation District
Robbins, IL	451,350	water and wastewater infrastructure improvements
Phoenix, IL	451,350	water and wastewater infrastructure improvements
Evansville, IN	950,200	infrastructure development of the Pigeon Creek Enhancement project
Gary Sanitary District, IN	1,805,500	wastewater infrastructure improvements within the Gary Sanitary District
Grand Rapids, MI	1,425,400	combined sewer overflow infrastructure improvements
Rouge River, MI	4,751,200	continuation of the Rouge River National Wet Weather Demonstration project
Oakland County, MI	1,425,400	Infrastructure improvements within the George W. Kuhn Drainage District
Western Michigan University, Kalamazoo, MI	950,200	water and watershed infrastructure improvements and research through Western Michigan University
Port Huron, MI	1,805,500	wastewater infrastructure improvements
Bad Axe, MI	1,354,100	continued drinking water infrastructure improvements
Mille Lacs, MN	1,805,500	continued development of the Mille Lacs regional wastewater treatment facility
Doan Brook Watershed Area, OH	1,829,200	continued development of a storm water abatement system

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Port Clinton, OH	1,425,350	combined sewer overflow infrastructure improvements
Van Wert, OH	1,425,350	combined sewer overflow infrastructure improvements
Girard, OH	950,200	water treatment infrastructure improvements
Toledo, OH	1,805,500	wastewater improvements associated with the Toledo Waste Equalization Basin
Jackson County, OH	1,354,100	drinking water infrastructure needs
Milwaukee, WI	2,850,700	continued development of the Metropolitan Sewerage District interceptor system
Beloit, WI	950,200	wastewater infrastructure improvements
Fort Chaffee, AR	950,200	water and wastewater infrastructure improvements
East Baton Rouge Parish, LA	950,240	water and wastewater infrastructure improvements
Ascension Parish, LA	1,187,800	water and wastewater infrastructure improvements
St. Gabriel, LA	237,560	water and wastewater infrastructure improvements
St. Bernard Parish, LA	1,900,500	water and wastewater infrastructure improvements
New Orleans, LA	3,800,000	wastewater infrastructure improvements
Lake Ponchartrain Basin, LA----see NOTE 2.	1,400,000	construction of wastewater and water treatment facilities and groundwater protection infrastructure
Lovington, NM	1,425,350	water and wastewater infrastructure and development needs
Belen, NM	1,425,350	water and wastewater infrastructure and development needs
Bernalillo, NM	950,253	water and wastewater infrastructure improvements
Albuquerque and Bernalillo County, NM	5,701,520	water and wastewater infrastructure improvements in the North and South Valley areas
Espanola, NM	475,127	water and wastewater infrastructure improvements
Clovis NM	475,100	emergency repair of a wastewater effluent holding pond and renovation of its wastewater treatment plant
Fort Worth, TX	950,200	wastewater, wet weather demonstration project
Brownsville, TX----see NOTE 3.	2,000,000	water supply project
El Paso-Las Cruces, TX----see NOTE 3.	3,000,000	sustainable water project
Kansas City, KS	855,200	wastewater infrastructure improvements
Meramac River, MO	2,256,800	the Meramac River enhancement and wetlands protection project
Jefferson County, MO	950,200	wastewater infrastructure improvements

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Missouri Department of Natural Resources	5,226,400	phosphorous removal efforts in southwestern Missouri communities under 50,000, including but not limited to, Nixa, Ozark, Kimberling City, Reeds Spring, and Galena wastewater treatment facilities discharging into Table Rock Lake watershed
Missouri Division of State Parks	3,135,800	water and sewer improvements needs including but not limited to the state parks of Meramec, Roaring River, Lake of the Ozarks, Knob Noster, Cuivre River, Mark Twain, and Trail of Tears
Omaha, NB	427,600	watershed management improvements
Montrose, City of, CO	1,425,400	wastewater treatment plant upgrade
East Missoula wastewater system, MT	237,550	wastewater infrastructure improvements
El Mars Estates, MT	237,550	the El Mar Estates wastewater treatment facility
Lolo, MT	475,100	the Lolo wastewater treatment plant
Lockwood, MT	3,801,000	for the Lockwood water and sewer district for implementation of its wastewater collection, treatment and disposal plan
Big Timber, MT	1,425,400	for the Big Timber wastewater treatment facility
Grand Forks, ND	2,850,700	water treatment plant
Dell Rapids, SD	475,100	wastewater treatment facility upgrade
Mitchell, SD	4,751,200	the Mitchell water system
Riverton, UT	475,100	continued development of the Riverton, Utah water reuse system improvement project
Ogden, City of, UT	1,900,500	water infrastructure improvements
Logan, UT	760,200	wetland development project
Yuma, AZ	285,100	the East Wetlands Restoration project
Arizona Water Infrastructure Financing Authority	2,850,700	for making a loan to the city of Safford, AZ to address the city's wastewater needs, which will be repaid by the city to the Arizona Clean Water Revolving fund established under title VI of the Federal Water Pollution Control Act, as amended
San Diego, CA	2,850,700	the Coastal Low Flow Storm Drain Diversion project
lower Santa Ana River, CA	950,267	the removal of <i>Arundo Dorax</i>

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Lake Elsinore, CA	475,133	restoration of Lake Elsinore
Olivenhain Water District, CA	2,850,700	continued construction of the water treatment project
Lake Tahoe, CA	950,250	continued work on the water export replacement project
Placer County, CA	950,250	wastewater infrastructure improvements at the Placer County Subregional Wastewater treatment Plant
Arcadia and Sierra Madre, CA	1,900,467	water and wastewater infrastructure improvements
San Dimas Walker House, City of, CA	950,233	water and wastewater infrastructure improvements
-----not designated-----	475,100	Desalination Research and Innovation Partnership, California
Calleguas Creek, CA	475,100	continued development of the watershed management plan
Yucaipa Valley Water District, CA	1,900,467	water, wastewater, and system infrastructure developments and improvements
Inyo County, CA	950,233	the Lower Owens River project in Inyo County
Los Angeles, City of, CA	475,100	the Lower Owens River project in the City of Los Angeles
Loma Linda, CA	475,100	the San Timoteo Creek environmental restoration project in Loma Linda
Sacramento, CA	1,900,500	combined sewer system improvement and rehabilitation project
Carlsbad, CA	475,123	a desalination facility
San Diego, CA	950,200	wastewater capital improvement program
Riverside County, CA	950,267	watershed planning for the community and environmental transportation acceptability process
Huntington Beach, CA	950,200	wastewater and sewer infrastructure improvements
Russian River Sanitation District, CA	451,400	wastewater infrastructure improvements
-----not designated-----	451,400	continued development of the Geysers Recharge project
Yucca Valley, CA	950,200	continuation of water reuse demonstration project
Twenty Nine Palms, CA	570,200	a water storage distribution project
Vallejo, CA	902,700	wastewater infrastructure needs on Mare Island
Los Angeles County, CA	1,425,400	sewer infrastructure improvements in the vicinity of the Santa Clara River in Los Angeles County
Kauai, County of, HI	1,425,400	the Lihue wastewater treatment plant
Moapa Valley Water District, NV	2,185,558	water and wastewater infrastructure needs
Fallon, City of, NV	950,242	water and wastewater infrastructure needs
Henderson, NV	855,200	water infrastructure improvements

<u>Designated Applicant or Area</u>	<u>Grant Amount</u>	<u>Project Description</u>
Sitka, City of, AK	475,100	water/sewer improvements
Anchorage, AK	3,563,400	water/sewer improvements in the Chugiak area
Valdez, City of, AK	3,563,400	water/sewer improvements
Jerome, ID	285,100	water and wastewater infrastructure improvements
Dietrich, ID	285,100	water and wastewater infrastructure improvements
Blackfoot, City of, ID	1,710,400	wastewater treatment plant improvements
Idaho, State of----see NOTE 4.	1,300,000	water and wastewater infrastructure projects
Hood River, OR	950,200	wastewater infrastructure improvements
Metaline Falls, WA	2,375,600	water system improvements
Bremerton, city of, WA	570,100	combined sewer overflow project
Klickitat, Village of, WA	427,600	water and wastewater infrastructure needs
Monroe County, Florida Keys, FL----see NOTE 5.	3,801,017	continuation of the National Community Decentralized Wastewater Demonstration Project
Mobile, AL----see NOTE 5.	1,140,305	continuation of the National Community Decentralized Wastewater Demonstration Project
Skaneateles Lake, NY----see NOTE 5.	665,178	continuation of the National Community Decentralized Wastewater Demonstration Project

NOTES:

1. The Conference Report incorrectly stated that the George's Creek Wastewater Treatment Plant is in Pickens County. Whereas, the treatment plant is actually located in Greenville County.
2. The FY 2000 Appropriations Act transferred unexpended funds appropriated in FY 1999 for the Lake Ponchartrain Basin Foundation circuit initiative from the S & T account to the STAG account.
3. The Brownsville Texas and the El Paso-Las Cruces projects are funded by monies appropriated for the United States-Mexico Border program.
4. The Emergency Supplemental Appropriations Act of FY 1999 transferred funds from the EPM account to the STAG account for water and wastewater projects in the State of Idaho.
5. These projects will be awarded and administered from Headquarters by the Municipal Technology Branch, Municipal Support Division, Office of Wastewater Management.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Proposed Delegation of Authority to Approve Grants and Cooperative Agreements for Water Infrastructure Projects for Fiscal Year 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and any Successor Accounts – DECISION MEMORANDUM

FROM: 
Robert Thorlakson, Director
Office of Water/Office of Research and Development Human Resources Staff

David R. Alexander, Director 
Organization and Management Consulting Services

TO: The Administrator

THRU: AX

ISSUE

The Office of Water (OW) proposes delegating to Regional Administrators (RAs) the authority to approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" from funds appropriated in Fiscal Year 1996 and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts.

BACKGROUND

The Fiscal Year 1995 Appropriations Act for VA, HUD, and Independent Agencies (P.L. 103-327) authorized the award of grants for 50 water infrastructure projects identified in the Conference Report (H.R. Report No. 715, 103d Cong., 2d Sess. at 39-43 (1994)). The authority to award these grants was delegated to Regional Administrators by Delegation No. 1-92, 1200 TN 373, dated 10/31/94). All funds available for the 50 projects under this appropriation have been awarded.

The EPA section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134) authorizes \$306.5 million in grant funding for 22 water infrastructure projects including some for which funds had been provided by P.L. 103-327 and for which additional grants had been awarded from funds provided by Continuing Resolutions (CRs) enacted prior to the enactment of P.L. 103-134. Close coordination with State and local agencies requires award and administration of these grants and cooperative agreements at the regional level.


ANALYSIS AND REVIEW

A new delegation is needed to allow Regional Administrators to award the remaining funds authorized by P.L. 104-134 for Congressionally-designated water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" because these grants will be subject to different terms and conditions --for example those concerning local cost-share arrangements-- than those awarded with funds provided by P.L. 103-327 and the FY 1996 CRs. Further, the FY 1996 Appropriations Act (P.L. 104-134) is the only statutory authority to award grants to many of the projects, so delegations already issued for other statutes (such as the Clean Water Act) are insufficient to allow Regional Administrators to award the grants. The new delegation of authority has been written so it will cover grants for similar water infrastructure projects authorized by future appropriations to the State and Tribal Assistance Grants Account or successor accounts.

The delegation proposal was distributed under the Directives Clearance Record review process to 15 offices. Three offices and three regions submitted comments. The Office of Grants and Debarment (OGD) and Region 8 submitted comments relating to the appropriate level for redelegation authority. The OGD also proposed adding an additional reference and deleting another reference. The Office of General Counsel had editorial comments and reviewed language changes proposed by other reviewers. Region 2 comments suggested that this delegation provide authority to award grants to States for providing assistance to "severely economically disadvantaged rural communities." No issue resolution was requested by any office or region and editorial comments submitted were incorporated into the final delegation.

RECOMMENDATION

This delegation is needed immediately to respond to the numerous requests from grantees agencies who have already developed applications. We recommend that you approve the proposed delegation by signing below.

Approved: 

Date: JUN 21 1996

Attachment

Delegation of Authority— Grants and Cooperative Agreements for Water Infrastructure Projects from Funds Appropriated for FY 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and Any Successor Accounts

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS**1-102. GRANTS AND COOPERATIVE AGREEMENTS FOR WATER INFRASTRUCTURE PROJECTS FROM FUNDS APPROPRIATED FOR FISCAL YEAR 1996* AND SUBSEQUENT YEARS TO THE STATE AND TRIBAL ASSISTANCE GRANTS ACCOUNT AND ANY SUCCESSOR ACCOUNTS**

1. AUTHORITY. To approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" from funds appropriated for Fiscal Year 1996* and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts and to perform other activities necessary for the effective administration of those grants and cooperative agreements.

2. TO WHOM DELEGATED. Regional Administrators.

3. REDELEGATION AUTHORITY. This authority may be redelegated to the Division Director or equivalent level and may not be redelegated further.

4. LIMITATIONS.

a. This delegation applies only to those grants and cooperative agreements for which there is no authority other than the statute making appropriations to the State and Tribal Assistance Grants Account and any successor accounts in Fiscal Year 1996* and subsequent years.

b. Awards are subject to guidance issued by Office of Wastewater Management and Office of Comptroller.

5. ADDITIONAL REFERENCES.

a. Authority to execute (sign) these financial assistance agreements is delegated to the Regional Administrators under Delegation 1-14, "Assistance Agreements";

b. 40 CFR Part 31,

c. 40 CFR Part 40 for Demonstration grants,

d. 40 CFR Part 35, Subpart K, and

e. EPA Assistance Administration Manual.

* The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134)

CROSS-CUTTING FEDERAL AUTHORITIES

Environmental Authorities

- o Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- o Clean Air Act, Pub. L. 84-159, as amended
- o Coastal Barrier Resources Act, Pub. L. 97-348
- o Coastal Zone Management Act, Pub. L. 92-583, as amended
- o Endangered Species Act, Pub. L. 93-205, as amended
- o Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- o Protection of Wetlands, Executive Order 11990
- o Farmland Protection Policy Act, Pub. L. 97-98
- o Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- o National Historic Preservation Act of 1966, PL 89-665, as amended
- o Safe Drinking Water Act, Pub. L. 93-523, as amended
- o Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities

- o Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- o Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.
- o Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

- o Debarment and Suspension, Executive Order 12549
- o New Restrictions on Lobbying, Section 319 of Pub. L. 101-121

Social Policy Authorities

- o Age Discrimination Act of 1975, Pub. L. 94-135
- o Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- o Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- o The Drug-Free Workplace Act of 1988, Pub. L. 100-690
- o Equal Employment Opportunity, Executive Order 11246
- o Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- o Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: NEPA Guidance for Special Wastewater Treatment Projects
in the FY95 Appropriation Bill

FROM: Richard E. Sanderson *Rich Sanderson*
Director
Office of Federal Activities (2252)

TO: NEPA Coordinators

The purpose of this memorandum is to provide guidance on the requirements for compliance with the National Environmental Policy Act (NEPA) for special projects authorized for EPA grant funding by the FY95 Appropriations Act (Act). The Act appropriated "no-year" money to fund special wastewater treatment projects identified by Congress. Each region has projects on this list. The list is included in the attached copy of the guidance memorandum prepared by the Office of Water Management (OWM).

The OWM memorandum indicates that NEPA applies to all of these projects except the three to be funded as Clean Water Act (CWA) section 104(b)(3) demonstration projects. These three are exempted from NEPA under the CWA section 511(c). The Office of General Counsel (OGC) has prepared an "Analysis of NEPA applicability to special grants authorized by FY 1995 Appropriations Act." This analysis is also attached.

OFA Guidance to Regional NEPA Coordinators

An independent EPA NEPA analysis for the non-demonstration projects is required. In addition, other cross-cutting federal statutes, such as the Endangered Species Act and the National Historic Preservation Act, also apply to these projects. The Council on Environmental Quality's (CEQ) NEPA regulations do not allow EPA to adopt a state analysis. However, the NEPA regulations do require agencies to "cooperate with State and local agencies to the fullest extent possible to reduce

duplication between NEPA and State and local requirements ..." (40 CFR 1506.2). There are several ways the regions can use the existing information and assessments for these projects as summarized below and as discussed in greater detail in the attached OGC analysis. **In all cases, EPA must independently evaluate the state documentation and review process and is responsible for the accuracy of the NEPA documentation and the adequacy of the process (40 CFR 1506.5).**

- Where states have performed environmental reviews under NEPA-like statutes or pursuant to State Revolving Fund regulations, EPA can incorporate, but not simply adopt, the state analysis into the Agency's NEPA analysis.
- Where state reviews have found no significant impacts and EPA approves of that finding and the state process, EPA may issue an environmental assessment (EA) summarizing and referencing the state analysis and an accompanying Finding of No Significant Impact (FONSI).
- Where state reviews have found significant impacts or EPA independently determines that there are significant impacts, EPA must issue a notice of intent and proceed with an environmental impact statement (EIS) and record of decision (ROD) in accordance with the Agency's regulations at 40 CFR Part 6.
- Where construction of projects is complete or nearly completed, a NEPA analysis will not have to be done.
- Where construction has started and the project is not nearly completed, a NEPA analysis is required and a notification of intent to pursue an independent analysis must be sent to the grantee.
- Where projects to be funded have been ongoing for several years, additional assessment may not be required if prior federal NEPA documentation has addressed the portions of the project to be funded by the FY95 grant. The region will need to assure that since the previous assessment: 1) there are no substantial changes in the proposed action relevant to environmental concerns, or 2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

If the NEPA analysis was carried out under an earlier construction grant action and is no longer adequate or the project has not previously been assessed by EPA, it will be necessary to issue either an EA/FONSI or an EIS/ROD. The regulations applicable to these special project grants are the CEQ regulations (40 CFR Parts 1500-1508) and EPA's NEPA regulations (40 CFR Part 6, Subparts A-D). EPA's regulations at 40 CFR Part 6, Subpart E, while they do not apply to these special project grants, may provide additional guidance.

We anticipate that additional issues or sub-issues may arise which are not fully treated in this general guidance memorandum. These should be brought to our attention as soon as possible. In addition, we have scheduled a teleconference on Tuesday, January 24, 1995 from 11:00 a.m. to 12:00 noon eastern standard time to discuss this guidance and additional issues or concerns with the process. The call in number is (202) 260-4257. We look forward to your participation. Please inform John Gerba (202/260-5910) if you or your staff will not be on the call.

Attachments

cc: Jim Havard, OGC
Ed Gross, OWM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Applicability of 40 CFR Part 29 to the Special
Projects Authorized by the FY 1995 Appropriations Act

FROM: *Michael J. Quigley*
Michael J. Quigley, Director
Municipal Support Division

TO: Municipal Construction Program Managers
Region I - X

We have been informed by the Office of General Counsel that 40 CFR Part 29 (Intergovernmental Review of EPA Programs and Activities) is applicable to the special projects authorized by the FY 1995 Appropriations Act.

The regulatory provision that will have the greatest impact is 40 CFR 29.8(c) which states that:

Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60 day opportunity for review and comment.

The above requirement can be satisfied in these three ways:

- (1) is to allow the areawide agencies the full 60 day period for review and comment.
- (2) is to request an expedited review by the responsible areawide agencies.
- (3) is to obtain a waiver declining the opportunity to review from the single point of contact (SPOC) clearinghouse. If a waiver is obtained, the SPOC must have the authority to act on behalf of the areawide agencies or obtain the concurrence of the responsible areawide agencies.

The Regions should inform the potential grant applicants that their applications must include documentation that satisfies the requirements of 40 CFR Part 29.

EPA Policy for Post-Award Management of Grants and Cooperative Agreements by Headquarters and Regional Offices

Document ID Number: GPI-99-5 Signer: David J. O'Connor Signature Date: 04/05/99 Revision Date:

Category: Grants Policy Issuance

MEMORANDUM

SUBJECT: EPA Policy for Post-Award Management of Grants and Cooperative Agreements
by Headquarters and Regional Offices

FROM: Romulo L. Diaz, Jr. /s/
Assistant Administrator

TO: Assistant Administrators
General Counsel
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Staff Office Directors

The EPA Policy for Post-Award Management of Grants and Cooperative Agreements by Headquarters and Regional Offices was signed by the Director of Human Resources and Organizational Services (OHROS) on April 5, 1999. OHROS is currently printing the policy and will be disseminating it throughout EPA.

Attached is an advance copy of the policy. This policy, (GPI-99-5) is also available on the EPA Intranet at <http://intranet.epa.gov/oinijhkhk/policy.htm>. The policy mandates that a post-award monitoring plan be developed by each Office and Region and signed by the Senior Resource Official by June 1, 1999. Questions about this policy should be directed to Cindy Sayers (202) 564-5316.

Attachment

cc: Deputy Administrator
Associate Deputy Administrator
Senior Resource Officials
Elizabeth Craig
Gary Katz

GPI-99-5

EPA POLICY FOR POST-AWARD MANAGEMENT OF GRANTS AND COOPERATIVE AGREEMENTS BY HEADQUARTERS AND REGIONAL OFFICES

Background As a result of 1996 Congressional hearings and OIG audits, the Agency identified material weaknesses in the areas of grants closeouts and oversight of assistance agreements. This policy is designed to help ensure that EPA Headquarters (HQ) and Regions perform post-award monitoring and management of assistance agreements. HQ Offices, Regions and Grants Management Offices and Financial Management Offices must work together to manage EPA's assistance agreements. This policy is the companion to the internal guidance, "Policy, Procedures and Guidelines for the Post-Award Management of Grants and Cooperative Agreements by Grants Management Offices" dated May 14, 1998.

Purpose This document establishes requirements for post-award monitoring of assistance agreements by any EPA HQ and Regional Office maintaining an active grant(s) or cooperative agreement(s).

Applicability This policy applies to all grants and cooperative agreements awarded after June 1, 1999.

Implementation June 1, 1999
Date

Regulations In addition to this policy, HQ and Regional Offices should consider the following when performing post-award monitoring: 40 CFR Parts 30 and 31; the Federal cost principles under OMB Circulars A-21 (colleges and universities), A-87 (state and local governments), and A-122 (Not-for-profit institutions); and OMB circular A-133 Single Audit Requirements. Other Parts of 40 CFR affecting grants (e.g., program grant requirements) are also considered appropriate. The EPA document, "Managing Your Financial Assistance Agreement, Project Officer Responsibilities", is applicable since it incorporates all of the above regulations and discusses the post-award responsibilities of Project Officers.

Definitions For purposes of this policy, post-award monitoring means the review and evaluation of grantee programmatic performance and compliance with regulations, policies, procedures, terms and conditions and the scope of work in the assistance agreement occurring after the award of the assistance agreement.

Policy It is EPA's policy that all EPA HQ Offices and Regions actively monitor grants and cooperative agreements subsequent to the signatures of award. The policy will assure that the agency's agreements are protected after the award phase. In furtherance of this policy, each HQ and Regional Office maintaining an active grant(s) or cooperative agreement(s) must establish and implement an active Annual Monitoring Plan (Plan). The plan should list what, how, and when activities will be performed by Project Officers and by their managers,

as necessary to monitor assistance agreement recipients.

Procedures 1. Each HQ Office and Region must develop an annual plan on how they will monitor their assistance agreements and their close-outs by January 1 of each calendar year. The initial plan for the 1999 year must be submitted to the Senior Resource Official (SRO) on June 1, 1999. This policy applies to assistance agreements awarded after June 1, 1999. A range of suggested baseline activities to consider for inclusion in a post-award monitoring plan is attached.

2. The Plan may aggregate monitoring activities for all of a HQ Office or Regions' assistance agreements, or it may address monitoring plans assistance agreement by agreement.

3. The Plan must be signed by the SRO. To ensure adequate planning within HQ and the Regions, a copy of the plan must be shared with the responsible Grants Management Office. The Director, Office of Grants and Debarment and/or the Division Director, Grants Administration Division, will meet with HQ Offices and Regions to discuss effectiveness of plans as well as proper coordination of monitoring activities.

4. Each HQ and Regional Office must include a discussion of overall monitoring activities against its Plan as a part of the Management Effectiveness Review.

SUGGESTED GUIDANCE: ACTIVITIES TO CONSIDER IN A POST-AWARD MONITORING PLAN:

While monitoring plans should be tailored to suit the specific needs of each HQ or Regional Office, the following broad categories should be considered as plans are developed.

Communicate with Recipients and the Grants Management Office: Project Officers should communicate with the person who signs the assistance agreement as well as other designees and the Grants Management Office, the Servicing Finance Office, Property Officers and Quality Assurance Officers (where applicable), at least once a year during the life of an award. Communication with the recipient is to determine if the project is progressing well. Communication with the Grants Management Office ensures a process is in place for monitoring assistance agreements. Communication can be in the form of a phone call, e-mail, meeting or a formal letter addressing discussions between the recipient and the Project Officer. For specific guidance, please see "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" training manual, Module V, 'Monitoring Recipient Performance'.

Monitor Recipient's Compliance with the Statement of Work, Assistance Agreement Terms and Conditions and Budget Expenditures: Project Officers should ensure progress reports are received and should monitor how the recipient is performing against the

Statement of Work, the amount of funds the recipient is receiving and whether programmatic terms and conditions are being met. Project Officers should contact the Grants Management Office immediately when problems occur. For specific guidance, please see "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" training manual, (especially Module V, 'Monitoring Recipient Performance'), and Grants Management Fact Sheet for Agency Leaders Number 3, 'Improper Expenditure of Grants Funds'.

Document Files: Project Officers should document their files by making brief notations or records of communication with assistance agreement recipients and the Grants Management Office. A well documented file serves as an excellent reference tool for personnel administering the assistance agreement. When preparing written notes to document actions, conversations, or events, at a minimum, consider including the following:

- Name of subject recipient organization;
- Names and titles of recipient organization representative and EPA staff involved;
- Topics of discussion and general scenario;
- Decisions reached and rationale behind the decisions;
- Assignment of subsequent actions to be taken, if necessary;
- Name of person who prepared the document and;
- Current date.

For specific guidance, please see Appendix Q 'EPA Official Project File' In the Project Officer training manual, "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" and Grants Management Fact Sheet for Agency Leaders Number 10, 'Assistance Agreement File Documentation'.

Review/Evaluate Recipient's Progress: Project Officers should conduct evaluations of their assistance agreement recipient's performance. Realizing that travel dollars will not always be available for on-site evaluations, other evaluation tools such as, desk reviews, surveys, questionnaires and teleconference/conferences can be employed to assess performance. Reports of these evaluations should be sent to the GMO. Project Officers should also include information on their workloads (e.g. how many assistance agreements they are monitoring) in their plan. Vulnerabilities discovered during the evaluation process should be communicated to the Grants Management Office and addressed in the monitoring plan. For specific guidance, please see "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" training manual (especially Module V, 'Monitoring Recipient Performance') and Attachment D to "Policies Procedures and Guidelines for the Post-Award Management of Grants and Cooperative Agreements by Grants Management Offices" (GPI-98-6).

Be Proactive; Evaluate the Need for Changes to Assistance Agreements: Project Officers should initiate action in a timely fashion when it is necessary to change assistance agreements. Project Officers and the recipient Project Managers should discuss any necessary changes and if agreed on, the changes should be communicated to the Grants

Management Office. For guidance on project changes, refer to the general regulations 40 CFR 30.25 "Revision of Budget and Program Plans" for non-profits and institutions of higher learning, and 40 CFR 31.30 "Change" for States, Local Governments and Indian Tribes. For further guidance, please see "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" training manual (especially Module V, 'Monitoring Recipient Performance'), and Grants Management Fact Sheet for Agency Leaders Number 2, 'Potential for Poor Quality Products'.

Certify Receipt of Final Technical Report to Facilitate Grant Close-out: Project Officers must ensure the adequacy of the recipient's final technical report and provide any other information, e.g. disposition of equipment if applicable, in order to facilitate a timely close-out of the assistance agreement. Project Officers should be aware of the recipients responsibility in the close-out process and review the general regulations 40 CFR 30.71 and 40 CFR 31.50 "Close-out Requirements". The Project Officer should seek the assistance and guidance of their Grants Management Specialist when needed. When the final technical report is received, the Project Officer should contact the Grants Management Office immediately to certify receipt and acceptance of the final technical report. Module VI, 'Close-out Process' of the Project Officer training manual, "Managing Your Financial Assistance Agreement, Project Officer Responsibilities" provides an overview of the close-out process. A copy of the "Financial Close-out Policy for Assistance Agreements" dated August 27, 1992 can be found in Appendix R of the Project Officer training manual and remains in effect.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Program Requirements for Mexican Border Area Projects Funded under the Authority of this Agency's FY 1995, 1996 and 1997 Appropriations Acts

FROM: *for Michael B. Cook*
Michael B. Cook, Director
Office of Wastewater Management

TO: William B. Hathaway, Director
Water Quality Protection Division
Region VI

Alexis Strauss, Acting Director
Water Management Division
Region IX

PURPOSE

The purpose of this memorandum is to establish consistent requirements for Mexican Border Area projects funded under the authority of this Agency's FY 1995, FY 1996, and FY 1997 Appropriations Acts.

BACKGROUND

Over the past three fiscal years the Office of Wastewater Management has issued the following memorandums concerning program requirements for Mexican Border Area projects:

- 10/20/94 - initial guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1995 Appropriations Act. (Did not include a separate section for Mexican Border Area projects.)
- 3/21/95 - a waiver to the match requirement that allowed the Region to vary the cost sharing arrangements, on a project by project basis, for facility planning and design projects funded under the authority of the FY 1995 Appropriations Act.

- 7/19/96 - guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1996 Appropriations Act (included a separate section for Mexican Border Area projects.)
- 9/13/96 - additional specific guidance on Mexican Border Area projects funded under the Authority of the FY 1996 Appropriations Act.
- 1/6/97 - guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1997 Appropriations Act (included a separate section for Mexican Border Area projects.)

The inclusion of guidance in five separate memoranda, with each memorandum covering a single fiscal year, has caused unnecessary complexity within the Mexican Border Area Program. The intent of this memorandum is to correct that problem.

GUIDANCE

Effective immediately, the attached 9/13/96 and 1/6/97 memoranda are the applicable guidance documents for new awards in the Mexican Border Area Program funded under the authority of any of the following Appropriations Acts: FY 1995, FY 1996 or FY 1997. However, the appropriate Appropriations Act must be cited as the statutory authority for awarding the grant.

I would also like to confirm the fact that the 1/6/97 memorandum allows the award of grants in the Mexican Border Area Program without any match requirement, if the circumstances warrant.

If you have any questions concerning this memorandum, you can contact me or have your staff contact Steve Allbee, Chief, Municipal Assistance Branch, Municipal Support Division, at (202) 260-5856.

Attachments

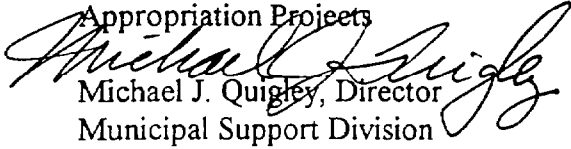


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Use of Title II Deobligations to Administer Construction Grant and Special Appropriation Projects

FROM: 
Michael J. Quigley, Director
Municipal Support Division

TO: Water Management Division Directors
Regions I - X

I am pleased to advise you of the availability of deobligated Title II funds for State administration of construction grant and Special Appropriation projects. The Environmental Protection Agency's (EPA) FY 1997 Appropriations Act (P. L. 104-204) permits EPA to make grants to the States for the administration of completion and closeout of a State's Title II construction grants program and for Special Appropriation **wastewater** grant projects* funded by appropriations since FY 1991, as well as those funded by appropriations after the date of this memorandum.

The FY 1997 Appropriations Act adopted the following Conference Report item:

"Amendment No. 71: Inserts language as proposed by the Senate which permits the Administrator of EPA to make grants to States, from funds available for obligation in the State under title II of the Federal Water Pollution Control Act, as amended, for administering the completion and closeout of a State's construction grants program. The conferees agree that this provision is needed in many States due to the appropriation of over \$1,800,000,000 since 1991 for wastewater grant projects and in view of the expiration of the section 205(g) reserve for such management activities."

Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal wastewater or industrial wastewater, including waste in combined, storm water and sanitary sewer systems

The language to which Amendment No. 71 refers is as follows:

“Provided further, That notwithstanding any other provision of law, beginning in fiscal year 1997 the Administrator may make grants to States, from funds available for obligation in the State under title II of the Federal Water Pollution Control Act, as amended, for administering the completion and closeout of the State’s construction grants program, based on a budget annually negotiated with the State.”

The following guidelines will apply to the award of Title II deobligations for the above stated purposes:

1. Beginning in fiscal year 1997 assistance may be awarded to States from any funds available for obligation in the State under Title II of the Federal Water Pollution Control Act. The first priority for the use of these funds is completion/closeout of the construction grants program.
2. Assistance will be awarded using the mechanisms and procedures employed for the award of State Management Assistance Grants under section 205(g).
3. Existing State delegation agreements may be used for State administration of construction grant projects. For Special Appropriation wastewater grant projects, you may amend the State delegation agreement or enter into a separate Memorandum of Agreement with the State.
4. Deobligated funds awarded under the provisions of the FY 1997 Appropriations Act may not be used for purposes other than those stipulated above, nor may these funds be used to free-up existing 205(g) reserves for use in non-construction grant activities that were eligible under section 205(g). However, 205(g) reserves on hand prior to October 1, 1996 may be used to administer Special Appropriation wastewater grant projects, provided sufficient 205(g) funds are retained for completion/closeout of the construction grants program.
5. While the legislation does not limit the dollar amount which may be awarded in any Fiscal Year, the award amount should reflect an annual budget negotiated with the State. Assistance may be awarded to cover only the reasonable costs of administering functions which are necessary to manage construction grant projects and Special Appropriation wastewater projects. Eligible costs incurred prior to grant award may be included in the initial award, if the funding period established in the grant includes the period for which the costs were incurred. Multi-year assistance may be awarded to take advantage

of available Title II deobligations, provided the out-year budget estimates support the award of additional funds and the State is not using these funds to finance personnel and other costs beyond those clearly justified by the remaining workload.

6. Title II deobligations continue to be covered by the August 18, 1995 class deviation which "extends the reallocation date of deobligated Title II funds reissued on or after October 1, 1990, and before October 1, 1997, until September 30, 1998. Title II deobligations reissued on or after October 1, 1997, will remain available for obligation until September 30 of the following fiscal year in accordance with 40 CFR 35.2010(d)."

Please call me if you have questions. Questions may also be referred to Arnold Speiser at 202-260-7377 or via E-Mail.

cc: Municipal Construction Program Managers, Regions I-X
Grants Administration Division